IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 27123 of 2007(D)

PETITIONER:

M.VIJAYA KUMAR,
MANAGING PARTNER, HOTEL RUBY ARENA,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TAXES(G) DEPARTMENT
THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM.

3. ASST. EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

4. THE ASSISTANT ENGINEER,
CITY ROADS SECTION, PUBLIC WORKS DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY ADV. SMT. M.K. PUSHPALATHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE CLASSIFICATION CERTIFICATE DATED 21.06.2006 ISSUED BY REGIONAL DIRECTOR, HRACC, INDIA TOURISM, GOVERNMENT OF INDIA; CHENNAI CLASSIFYING THE HOTEL IN 3 STAR CATEGORY TO THE PETITIONER'S HOTEL.

EXT.P2: A TRUE COPY OF THE GUIDE LINES ISSUED BY H&R DIVISION, DEPARTMENT OF TOURISM, GOVERNMENT OF INDIA SPECIFYING THE CONDITIONS NECESSARY FOR CLASSIFYING HOTELS IN VARIOUS STAR CATEGORIES.

EXT.P3: A TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 19.02.2007.

EXT.P4: A TRUE COPY OF THE REPLY DATED 02.04.2007 ISSUED BY THE 4TH RESPONDENT.

EXT.P5: A TRUE COPY OF THE JUDGMENT DATED 18.10.1993 IN W.A. 1220/93 OF THIS HON'BLE COURT.

EXT.P6: A TRUE COPY OF THE JUDGMENT DATED 22.02.1999 IN W.A. 208/99 OF THIS HON'BLE COURT.

/True Copy/

P.A to Judge.

THOTTATHIL B. RADHAKRISHNAN , J

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W.P.(C). NO. 27123 OF 2007

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Dated this the 16th day of November, 2007.

JUDGMENT

The petitioner has a hotel near the men's hostel of the Trivandrum Medical College. That hotel is classified as a 3 star hotel. According to him, it has all the facilities to be classified as 4 star hotel. However, such classification would depend on whether the petitioner has FL3 licence in terms of Rule 13(3) of the Foreign Liquor Rules.

2. The distance of the hotel from an educational institution should be 50 meters for an FL3 licence. In **State of Kerala v. Sukumaran** (1988(2) KLT 261), the Division Bench of this Court laid down that hostel is part of an educational institution. This means that the distance rule contained in Rule 13 (3) applies to the hostel also.

3. But, the distance has to be measured from the main gate of the hostel to the main gate of the hotel. Ext.P4 shows that the road in question has a central line and also a zebra crossing. If that be so, Ext.P5 judgment would advise that the

distance has to be measured from the main gate of the hostel to the main gate of the hotel, by taking the distance that a law-abiding pedestrian would walk through, using the zebra cross to reach the hotel from the hostel gate. But, if the zebra cross is so remote that it would be totally unreasonable to insist any person to use that, the distance cannot be measured through the zebra crossing.

4. The assertion of the petitioner that he has all the other facilities to be classified as a 4 star hotel is not disputed in the counter affidavit. If that be so, the only issue is regarding the distance. As regards that, the presence of zebra crossing is not disputed as such. But, what is stated is that the distance from the gate of the hotel to the gate of the hostel is 41 meters and that it was unnecessary to measure the distance from the zebra crossing. Such view can be taken only if the passage through the zebra crossing has to be totally excluded as stated above. Otherwise following Ext.P5 judgment, the distance has to be measured through the zebra crossing. This is more so because the road has a central line dividing the road longitudinally into two halves.

5. For the aforesaid reasons, this writ petition is disposed of directing that the distance from the gate of the men's hostel of the Medical College Hospital, Thiruvananthapuram to the main gate of the petitioner's hotel shall be re-measured in terms of what is aforesaid and the issue shall be decided afresh. To and such process Ext.P3 is quashed.

It is directed that the final decision shall be taken within an outer limit of one month from the date of receipt of a copy of this judgment. The petitioner shall be afford an opportunity of being heard.

THOTTATHIL B. RADHAKRISHNAN, JUDGE.

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